



SECRETARY OF STATE
KEVIN SHELLEY
STATE OF CALIFORNIA

DATE: January 21, 2004

TO: All County Clerks/Registrars of Voters (04030)

FROM: _____/s/_____
KEVIN SHELLEY
SECRETARY OF STATE

SUBJECT: **Implementing Identification and Provisional Ballot Requirements of HAVA**

After extensive discussions with elections officials, members of the Secretary of State's Advisory Committee, and many organizations and individuals, I am providing the following guidelines for implementing the identification and provisional ballot requirements of HAVA for the March 2004 and subsequent elections:

1. Registration by Mail (HAVA Section 303(b)(1)(A)): "Registration by Mail" shall be limited to registration affidavits that bear a United States Postal Service postmark.
2. Federal Election (HAVA Section 303(b)(1)(B)): "Federal Election" shall be an election that involved a candidate for federal office held at any time.
3. Change of Registration (HAVA Section 303(b)(1)(A)): "Registration by mail" does not include changes of address, name, political party, or other information on the voter registration affidavit.
4. Match Against Existing State Identification Record (HAVA Section 303(b)(3)(B)): If the name, date of birth and driver's license number (or DMV identification number) on the DMV database and registration affidavit match, then no identification documents should be requested of the registrant who votes in person or by mail.
5. Current and Valid Photo Identification (HAVA Section 303(b)(2)(A)(i)): A "current and valid photo identification" is being defined by emergency regulation to be:

Section 20107 of Title 2 of the California Code of Regulation:

(d)(1) For purposes of this subdivision, “photo identification” means a document prepared by a third party in the ordinary course of business that includes the photograph and name of the individual presenting it, including:

- A. a driver’s license or identification card of any state;
- B. a passport;
- C. an employee identification card;
- D. an identification card provided by a commercial establishment;
- E. a credit or debit card;
- F. a military identification card;
- G. a student identification card;
- H. a health club identification card;
- I. an insurance plan identification card;
- J. any other document specified in writing by the Secretary of State that is prepared by a third party in the ordinary course of business that includes the photograph and name of the individual presenting it.

6. Other Acceptable Documents for Identification (HAVA Section 303(b)(2)(A)(ii):
“Other Document” is being defined by emergency regulation to be:

Section 20107 of Title 2 of the California Code of Regulation:

(d)(2) any of the following documents, provided that the document includes the name and address of the individual presenting it, and is dated since the date of the last general election, unless the document is intended to be of a permanent nature such as a pardon or discharge, including:

- A. a utility bill;
- B. a bank statement;
- C. a government check;
- D. a government paycheck;
- E. a document issued by a governmental agency;
- F. a sample ballot;
- G. a voter notification card;
- H. a public housing identification card;
- I. a lease or rental statement or agreement;
- J. a student identification card;
- K. a tuition statement or bill;
- L. an insurance plan card;
- M. discharge certificates, pardons, or other official documents issued to the voter in connection with the resolution of a criminal case, indictment, sentence, or other matter;
- N. senior citizen discount cards issued by public transportation authorities;
- O. identification documents issued by governmental disability agencies;

- P. identification documents issued by government homeless shelters and other temporary or transitional facilities;
- Q. a drug prescription issued by a doctor or other health care provider;
- R. tax return;
- S. property tax statement;
- T. vehicle registration or certificate of ownership;
- U. any other document specified in writing by the Secretary of State that includes the name and address of the individual presenting it, and is dated since the date of the last general election.

7. Doubts Regarding Sufficiency of Documents: Any doubts regarding the sufficiency of identification presented shall be resolved in favor of the voter.

8. Provisional Voting in Lieu of Presenting Identification (HAVA Section 303(b)(2)(B)): A person who votes by way of a provisional ballot in lieu of submitting acceptable identification shall not be required to present or submit identification in order to have the ballot counted. The provisional ballot shall be processed according to Elections Code section 14310.

9. Processing of Voters Required to Present Identification at Polling Places: Counties should implement the identification provisions of HAVA in substantially the following manner:

- (1) County elections officials, to the extent practical, shall identify on their databases those voters who appear to be subject to the identification requirement.
- (2) Those voters who appear to be subject to the identification requirement shall be so indicated on the roster in a non-pejorative manner.
- (3) Polling place voters, apparently subject to the identification requirement, shall, in a respectful manner, indicate that new federal law requires that new voters who register by mail either: 1) show appropriate identification prior to voting in order to vote a regular ballot or 2) can vote without showing identification a provisional ballot which will be counted after eligibility to vote is determined by referring to the voter's affidavit of registration.
- (4) A list of acceptable identification shall be made available to the voter in the appropriate languages. Any doubt as to the sufficiency of the identification presented shall be resolved in favor of permitting the person to vote a regular ballot. If the voter does not have any acceptable identification or does not wish to present any identification, the poll worker shall treat the voter as a provisional voter.

- (5) By mail voters who appear to be subject to the identification requirement should be advised in the material sent to the voter what documentation should be returned with the voted ballot to satisfy the requirement. If insufficient documentation is returned, the voter should be treated as a provisional voter.
- (6) Elections officials shall educate poll workers especially with respect to the identification and provisional ballot procedures. Elections officials shall advise poll workers that persons have a right not to present identification and to vote a provisional ballot and that poll workers have an obligation to ensure that voters can exercise these rights. Poll workers knowledgeable with respect to these procedures shall be available to assist minority language voters, individuals with disabilities, and voters with literacy issues.

10. Provisional Ballot “Free Access” Requirement (HAVA Section 302(a)(5)(B)):

Each county must implement a provisional ballot “Free Access” system. The following minimum standards shall apply:

1. No Fee - The system must not have a fee for voters who seek to access it within their jurisdiction of registration. (a toll-free or Internet-based system is permitted)
2. Hours Available - The system must be available, at a minimum, during regular business hours, but should, if possible, be accessible at all hours.
3. Equal Treatment - The system must treat all provisional voters within a jurisdiction equally.
4. Passwords - The system may use a password or access number, but neither shall include, in whole or in part, the voter’s driver license number, CA identification card number, or Social Security number.
5. Voter Privacy - The system must reasonably ensure that information about an individual provisional ballot shall be restricted to the individual who cast the ballot.
6. Ballot Confidentiality - The system must not reveal how the voter marked his or her ballot.
7. Vote Counted Information - The system must reveal to the voter whether his or her provisional ballot was counted and, if the ballot was not counted, the reason the ballot was not counted. The information shall include whether only some of the votes on the provisional ballot were counted because the voter cast a ballot in the incorrect precinct within the jurisdiction.
8. Registration Information - The system must provide instructions to a voter, whose vote was not counted, on how to register to vote for the next election, if the voter is not registered.
9. Registration Card - The system must provide every provisional voter who is not registered with a voter registration card for the purpose of registering to vote in future elections.
10. Disability and Language Accessible - The system must be accessible by the handicapped and those who do not speak English fluently.

11. Free Access Information - The system must provide written information at the polling place, or by return mail in the case of an absentee voter, to each provisional voter on how to access the system. The system may, but need not, provide at the polling place each provisional voter with a postage-prepaid card for requesting information regarding the counting of his or her provisional ballot.
12. Deadline - The system must establish a deadline following the election by which the “free access” information will be available.
13. Proactive Notification - The system may, but need not, provide every provisional voter with the information regarding the counting of his or her provisional ballot regardless of whether the information was requested. (A provisional voter is entitled to inquire as to the status of his or her ballot. Under this approach, the voter would receive notification whether or not an inquiry was made.)
14. Proactive Return Card - The system may, but need not, provide at the polling place each provisional voter with a postage-prepaid card for requesting information regarding the counting of his or her provisional ballot.